

**BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001**

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Section 701 Report

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Docket No. PI2016-3

**COMMENTS OF THE PARCEL SHIPPERS ASSOCIATION  
(June 14, 2016)**

The Parcel Shippers Association (PSA) respectfully submits these comments in response to PRC Order No. 3238, Notice and Order Seeking Comments on Report to the President and Congress Pursuant to Section 701 of the Postal Accountability and Enhancement Act (April 14, 2016) (Order).<sup>1</sup>

Founded in 1953, PSA represents companies that sell and ship goods to consumers and companies that support the parcel shipping industry. A list of PSA members is available on its website, [www.parcelshippers.org](http://www.parcelshippers.org). PSA's mission is to foster competition in the parcel delivery market. It creates value for its members by promoting the best possible service at the lowest possible costs. For competition to succeed it must be fair and PSA has consistently argued for a "level playing field" in the package delivery market.<sup>2</sup>

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<sup>1</sup> Pub. L. No. 109-435, 120 Stat. 3198 (Dec. 20, 2006). The PAEA amends various sections of title 39 of the United States Code. Unless otherwise noted, section references in these comments are to sections of title 39.

<sup>2</sup> See, e.g., Docket No. R2013-11, Reply Comments of the Parcel Shippers Association, Dec. 6, 2013, at 3; see also Report on Universal Postal Service and the Postal Monopoly, Docket No. PI2008-3, Reply Comments of Parcel Shippers Association, August 4, 2008, at 2 ("PSA agrees that, as suggested by others, the Postal Service should be given substantial flexibility with respect to competitive products to adapt to market forces and compete on a level playing field."); see also Review of the Treasury Report, Docket No. PI2008-2, Comments of Parcel Shippers Association on Treasury Report, April 1, 2008, at 10 ("The overriding purpose of the PAEA in the competitive market was to level the competitive playing field: 'Our bill has the primary goal of allowing the Postal Service

PSA submitted views when the Commission requested comments in 2011. Parcel Shippers Association Comments on Legislative and Other Changes That Will Improve The Effectiveness And Efficiency Of The Postal Laws Of The United States (February 1, 2011)(PSA Sec. 701 Recommendations). Neither the law nor PSA's views have changed much since then.

Below PSA addresses several of the areas of interest described in Order No. 3238.

*The Postal Service Financial Situation (Order at 4-5)*

The Commission points out that “[d]espite a slight improvement in its liquidity from 2014, the Postal Service continues to face significant financial challenges ahead.” Order at 4. These challenges are largely caused by overly aggressive prefunding requirements for Postal Service retiree health benefits, the use of inappropriate actuarial assumptions for determining the Postal Service’s liability for retiree pension benefits, limitations on the Postal Service’s ability to prudently invest its postretirement fund assets, and the failure to adopt private sector best practices with respect to integrating statutorily required retiree health benefits programs with Medicare.

Changes in the law necessary to address these shortcomings have been proposed and are being considered by Congress. PSA along with a significant portion of the mailing industry, four postal employee organizations, and the Postal Service have presented proposals most recently summarized in the testimony of Postmaster General Megan Brennan before the House Committee on Oversight and Government Reform.<sup>3</sup> PSA supports these proposals and urges the Commission to recommend them.

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to continue to fulfill its universal service mission at a reasonable cost. To achieve this goal, the legislation establishes a modern system for regulating rates, gives needed flexibility to the Postal Service, and includes provisions to ensure a level playing field for the Postal Service and its competitors.’ Statement for the Markup of the Postal Accountability and Enhancement Act House Committee on Government Reform by Rep. Henry A. Waxman (May 12, 2004).”)

<sup>3</sup> Written Testimony of Postmaster General Megan Brennan. House Oversight and Government Reform Committee Hearing “Reforming the Postal Service: Finding a Viable Solution.” Wednesday, May 11, 2016 at 11-16.

*The Competitive Rate System (Order at 6)*

The competitive rate system established by the PAEA has, in general, operated effectively and has resulted in a reasonably level playing field for the Postal Service and its competitors in the domestic package-delivery business.

The Commission notes that it “must ensure that market dominant products do not subsidize competitive products, that each competitive product covers its costs, and that competitive products collectively cover an appropriate share of institutional costs. The current appropriate share is a minimum of 5.5 percent of the Postal Service’s total institutional costs.” Order at 6. The existing competitive rate system has been successful in ensuring compliance with these requirements. Competitive product revenues substantially exceed incremental costs and the contribution of competitive products to institutional costs is substantially above 5.5 percent and growing. Docket No. RM2016-2, Comments of the Parcel Shippers Association (January 25, 2016) at 2-3.

PSA, however, believes that the Commission should make two changes with respect to the system. First, the Commission, in its second review under 3633(b)(2), should eliminate the minimum contribution requirement. As PSA explained in Docket No. RM2016-2, the incremental cost test, codified in PRC rule 3015.7(a), is the appropriate cross-subsidy test.

It is now standard in the regulatory economics literature that avoiding cross-subsidization means that the customers of each product (or group of products) pay more to the firm in revenues than the incremental cost of said product (or group of products).

*Id.* at 2 (quoting John C. Panzar, *The Role of Costs for Postal Regulation*, (2014) p. 15). Because the actual percentage contribution made by competitive products is much larger than 5.5 percent, the current minimum contribution requirement has no effect on Postal Service pricing. However, a contribution floor that requires competitive product rate increases would negatively affect the Postal Service, its customers, and consumers.

These higher prices would be harmful to both parcel shippers and their customers, consumers. Additionally, losing volume to competitors will cost the Postal Service contribution. This is not only bad for the Postal Service, but also for its remaining customers who mail letters, flats and other products. It is they who will ultimately pay higher prices to keep the Postal Service solvent.

*Id.* at 7. Second, the Commission should revisit its determination that Parcel Select Lightweight is a competitive product. Section 3642(b)(1) of the PAEA states:

The market-dominant category of products shall consist of each product in the sale of which the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products. The competitive category of products shall consist of all other products.

This January's 23.5 percent average increase suggests that the Postal Service believes it "can raise [Parcel Select Lightweight] prices significantly...without risk of losing a significant level of business to other firms offering similar products." Parcel Select Lightweight appears to meet the PAEA definition of a market-dominant product.

With respect to the competitive rate system, the Commission also asked for comment on the Federal Trade Commission's (FTC) report on federal and state laws that apply differently to the Postal Service with respect to competitive products.<sup>4</sup> In its report, the FTC did not quantify two significant disadvantages resulting from laws that apply differently to the Postal Service and its competitors: limitations on the Postal Service's ability to (1) manage its postretirement health benefit program; and (2) rationally and prudently invest its retirement assets. The Commission should quantify and account for these disadvantages when evaluating the impact of laws that apply differently to the Postal Service and its competitors. The Commission should also, as discussed above, recommend that Congress eliminate these substantial disadvantages that the Postal Service faces vis-à-vis its competitors.

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<sup>4</sup> Federal Trade Commission, Accounting for Laws that Apply Differently to the United States Postal Service and Its Private Competitors: A Report by the Federal Trade Commission, December 2007 (FTC Report) (available at <https://www.ftc.gov/reports/accounting-laws-apply-differently-united-states-postal-service-its-private-competitors>).

### *Negotiated Service Agreements (NSAs) (Order at 7)*

A major success of PAEA has been that, consistent with the practice of Postal Service competitors of negotiating customized deals with its customers, the competitive rate system has allowed the Postal Service to negotiate competitive product NSAs with its customers. Indeed, as of November 2015, the Commission had approved 648 domestic NSAs under the PAEA. See Postal Regulatory Commission, *Negotiated Service Agreements (NSAs) Statistics November 2015 Update*.

Critical to the success of competitive product NSAs has been the Commission's vigilance in keeping the contents of these agreements confidential. PSA continues to believe that Commission review of NSAs, filed under seal, provides an appropriate balance that ensures statutory compliance while allowing the Postal Service to compete on an even footing with its competitors.

Flexibility to negotiate and implement deals must include rules that minimize the amount of information that must be publicly disclosed. Undue disclosure will not only put the Postal Service at a competitive disadvantage by allowing its competitors to undercut the negotiated prices, but also deter private companies from doing deals with the Postal Service out of fear that confidential, commercially sensitive information will be made public.

Docket No. RM2007-1, Comments of the Parcel Shippers Association (April 6, 2007) at 22. Reviewing competitive product NSAs is a task that should be performed by the Commission alone.

In several recent dockets, interested parties have requested and been granted access, subject to protective conditions, to a substantial amount of non-public material regarding Postal Service costs.<sup>5</sup> PSA has no issue with this; this is how the system should work. The bar for justifying access to customer-specific NSA information, however, should be much higher.

### *Market Dominant Rate System (Order at 5-7)*

While PSA primarily represents the interests of its members with respect to

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<sup>5</sup> See, e.g., Docket No. ACR2014, PRC Order No. 2321, Order Granting Request for Access (January 15, 2015); Docket No. RM2015-7, PRC Order No. 2326, Order Granting Motion for Access to Non-Public Material (February 24, 2015); Docket No. ACR2015, PRC Order No. 3033, Order Granting First Motion for Access (January 15, 2016).

competitive products, our members also mail substantial volumes of market dominant products such as catalogues. A healthy market dominant product line from the Postal Service is important to us not just because our members use the services, but also because these products help fund the substantial shared Postal Service costs necessary to maintain the universal delivery network that our members depend on to deliver their products to their customers.

PSA agrees with the Commission that “[o]ne potential area of interest associated with the market dominant rate system is worksharing.” Order at 6. As the Commission explains:

Workshare discounts provide reduced rates for mailers based on the costs avoided as a result of the mailer performing an activity that would otherwise be performed by the Postal Service. Under the PAEA, the Commission must review workshare discounts to ensure that the discounts do not exceed the Postal Service’s avoided costs, subject to limited exceptions. 39 U.S.C. 3622(e)(2).

*Id.*

We are troubled that the Commission goes on to emphasize that “[l]egally, workshare discounts are only bound by this ceiling; the Postal Service is not bound by this provision to increase a workshare discount that is less than avoided costs.” *Id.* While the law, *i.e.* section 3622(e), expressly establishes a “ceiling,” the Commission has the authority to adopt a rule establishing a cost-based “floor” on workshare discounts. And it should.

Requiring that discounts be set equal to avoided costs would promote efficiency by ensuring that work is performed by the least cost provider. Discounts set at less than avoided cost result in the Postal Service performing work that can be better performed by the private sector and maintaining an inappropriately large network.

A shift in focus from [cost-based] price signals designed to drive the lowest combined costs to prices [based upon less-than-full passthroughs] geared to promote the use of excess capacity is problematic. First, it is a substantial and inappropriate departure from the long-standing pricing policy that has resulted in enhanced economic efficiency for both the mailing industry and the Postal Service. Second, it suggests the use of the Postal Service’s monopoly position to engage in a form of exclusionary pricing – discouraging the most efficient providers from performing upstream services (e.g., sortation and transportation) at lower cost. Prices

that encourage work to be performed by the least cost provider (i.e., whether that provider be a mailer, mail service provider, or the Postal Service) are efficient and allow the Postal Service to size its infrastructure appropriately. In contrast, inefficient prices designed to make work for the Postal Service will result in too large a network [and] higher costs to mailers.

Docket No. R2012-3, Joint Comments of the Direct Marketing Association, Inc., the Mailing and Fulfillment Service Association, the Major Mailers Association, the National Association of Presort Mailers, the National Postal Policy Council, and the Parcel Shippers Association (November 7, 2011) at 3. A Commission rule requiring that workshare discounts be set equal to avoided costs is necessary to give effect to the statutory objectives and factors and to ensure fair competition in upstream markets. If the PRC were to require, by rule, that the Postal Service set workshare discounts equal to avoided costs, those regulations would legally bind the Postal Service. It can be done under existing law.

#### *Nonpostal Services (Order at 9)*

Page 9 of the Order “welcomes comments on issues related to nonpostal services, particularly, whether the Postal Service should be permitted to offer them in the future and, if so, whether and how the Commission should review new nonpostal services.” PSA addressed this in its 2011 comments and with minor exception its views have not changed.

Our Members worry that the Postal Service does not have the resources, particularly in the area of information technology, to maintain and improve its traditional constitutionally-authorized service, i.e. delivering the mail, while exploring speculative new nonpostal endeavors. Past forays into new nonpostal fields have been uniformly unsuccessful, drained executive resources that could have been employed elsewhere, and benefited neither the Postal Service’s bottom line nor the mailers it serves. Congress addressed this in the PAEA and prohibited new nonpostal endeavors. Exceptions to that rule, if any, should be carefully scrutinized and the Commission should retain the final say in this area.

PSA Sec. 701 Recommendations at 3. PSA supports, however, proposals to specifically authorize the Postal Service to provide governmental services to or on behalf of state and local governments.

On a related note, several parties have recently argued that the Postal Service's core mission is letter, but not package, delivery.<sup>6</sup> This is flat out wrong. Section 102(5) of Title 39, United States Code, as amended by section 101 of the PAEA, specifically defines mailable packages as a postal service ("the delivery of letters, printed matter, or mailable packages").

### *Conclusion*

PSA congratulates the Commission on its implementation of the PAEA; it now reviews postal price increases in weeks, not months, including promotions, market tests of new products and hundreds of customized mailing contracts. The Commission has also seen to the implementation and oversight of the statutory price cap on market dominant products and rules that prevent cross-subsidization between competitive and market dominant products.

Overall, the PAEA has been beneficial to the mailing community. The American public continues to benefit from affordable, universal mail service. As a result of the price cap, most prices are significantly lower than they would have been absent postal reform and Postal Service costs have been reduced by billions. This has been a significant benefit to commercial and consumer mailers. Finally, "level playing field" rules strongly supported by PSA have enabled the Postal Service to fairly participate in competitive markets and negotiate prices much as private carriers do providing additional capacity for the ecommerce package boom.

Respectfully submitted:

/s/

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<sup>6</sup> See, e.g., Docket No. ACR2015, Comments of the American Consumer Institute Center for Citizen Research (ACICCR)(February 2, 2016) at 2; Docket No. ACR2015, Taxpayers Protection Alliance Comments on Annual Compliance Report (February 1, 2016), Attachment entitled "U.S. Postal Service Needs Principled and Accountable Oversight."